United Nations A/HRC/28/10/Add.1

General Assembly

Distr.: General
13 March 2015

Original: English and Russian

Human Rights Council
Twenty-eighth session
Agenda item 6
Universal Periodic Review

Report of the Working Group on the Universal Periodic Review*

Kazakhstan

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document was not edited before being sent to the United Nations translation services.

GE.15-04989 (E)
1504989

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Contents

		Paragraphs	*Page*
	Introduction	1–9	3
I.	Scope of international obligations	10–15	3
II.	Institutional and human rights infrastructure	16–17	4
III.	Policy measures	18–19	4
IV.	Equality and non-discrimination	20–23	4
V.	Right to life, liberty and security of the person	24–28	5
VI.	Administration of justice, including impunity and the rule of law	29–30	5
VII.	Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life	31–44	5
VIII.	Social rights of migrants and members of their families, their equal rights access to work, education and health	45–46	7

Introduction

1. Kazakhstan considers the Universal Periodic Review as an important tool in strengthening human rights activities of the state.

2. Participation in the Universal Periodic Review allows Kazakhstan to make a consistent monitoring of achievements and challenges in the promotion of human rights on permanent basis.

3. The competent authorities of the Republic of Kazakhstan have carefully examined the 194 recommendations that it received on 30 October, 2014 during the twentieth session of the Working Group on the Universal Periodic Review of the Human Rights Council.

4. Previously, recommendation 126.27 was not supported by the Republic of Kazakhstan.

5. In the light of entering into force from 1st January, 2015 Criminal, Criminal Procedure and Penal execution Codes, the Republic of Kazakhstan considers necessary to transfer recommendation 126.27 from not supported recommendations to the implemented and achieved in practice.

6. In this regard, the Republic of Kazakhstan in all, accepts not 47, but 48 recommendations as implemented and achieved in practice.

7. Republic of Kazakhstan accepts 96 recommendations, which are in the process of implementation.

8. From previous not accepted 51 recommendations, by one of them as stated before, the Republic of Kazakhstan made a decision to transfer it into the already implemented recommendation. The Republic of Kazakhstan cannot support the rest of recommendations either because they contradict the letter, spirit or practical implementation of the law or certain trends in its development, or because the assertions made in separate recommendations reveal factual inaccuracies and inconsistencies.

9. Explanations of the Republic of Kazakhstan with regard to unaccepted recommendations are set out below in thematic clusters.

I. Scope of international obligations

10. The following recommendations **do not enjoy the support** of the Republic of Kazakhstan:126.1; 126.2; 126.3; 126.4; 126.5; 126.6; 126.7; 126.8; 126.9; 126.10; 126.11; 126.12; 126.13; 126.14; 126.15; 126.16; 126.17; 126.18; 126.19, 126.51.

126.1;126.2;126.3;126.4.

11. Legislation and international agreements, ratified by Kazakhstan provides sufficient level of protection of migrant workers. Consequently Kazakhstan will continue considering compatibility of the norms of legislation with the Article 2 paragraph 1 of the International Covenant on Economic, Social and Cultural rights.

126.5;126.6;126.7;126.9;126.10;126.11;126.12.

12. Kazakhstan pursues a policy of gradual abolition of the death penalty. Nowadays, an indefinite moratorium is in force. In fact, State fulfills all tasks of the Protocol. Feasibility of ratification will be considered after the finalization of humanization of legislation and law enforcement practice.

126.8.

13. Kazakhstan will come back to considering recommendation after the formation of Trust fund.

126.13;126.14;126.15;126.16;126.17;126.18;126.19.

14. The decision will be made taking into account the constitutional norms of Kazakhstan after finishing studying the experience of the International Criminal Court, measures on harmonization of the legislation will be taken after the decision is made.

126.51

15. The legislation already provides criminal punishment for such offences and the statute of limitation is not applied to those offences. However, for a decision on accession time is needed to study the Convention and practice of the member states on its application.

II. Institutional and human rights infrastructure

16. Kazakhstan **does not accept** the recommendation 126.30.

17. According to the legislation the Ombudsman carries out its mandate on the whole territory of the Republic. State takes measures to strengthening Ombudsman's mandate through the National Preventive Mechanism (NPM) based on a model `Ombudsman +` and reinforcing its administrative resources.

III. Policy measures

18. The Republic of Kazakhstan does not accept the recommendation 126.20.

19. Revision of the National Human Rights Plan for 2009-2012 is not relevant due to the start of development of a new plan for 2016-2020.

IV. Equality and non-discrimination

20. The Republic of Kazakhstan **does not accept** the following recommendation: 126.21; 126.22; 126.23; 126.24.

126.21

21. The existing rules for registration of religious organizations do not limit the right of citizens to freedom of religion, are transparent and accessible. Therefore, we do not see any grounds for the revision.

126.22, 126.23

22. There are no grounds for making amendments to the Labour Code. Wages are determined according to the qualifications of the employee and working conditions, differences by gender in law and in practice are not provided. Moreover, Kazakhstan has ratified the ILO Conventions 100 and 156, which under the Constitution of the state are recognized as law in force and have precedence over the national law.

126.24

23. The legislation provides the principles and provisions that guarantee non-discrimination on grounds of sex. In this context, and given the practice, we do not see any grounds for strengthening the legal framework.

V. The right to life, liberty and security of person

24. The Republic of Kazakhstan **does not accept** the following recommendations: 126.25; 126.26; 126.31.

126.25

25. The definition of human trafficking complies with the international standards. The state continues to improve the legislation and practice on other aspects – referral of victims of human trafficking and payment of compensation to them.

26. As to the issues on wages please see the response on the recommendations 126.22, 126.23.

126.26

27. In view of the ongoing process of humanization of the legislation and practice, including moratorium on the execution of the death penalty, the implementation of the recommendation is carried out gradually.

126.31

28. The resolution is part of the law in force in Kazakhstan. The monitoring of its implementation is carried out by the National Commission for Women, Family and Demographic Policy. In this regard, the adoption of separate national plan is unnecessary. At this stage the mentioned resolution carried out in the frame of comprehensive strategic documents on human rights and international security.

VI. Administration of justice, including impunity and the rule of law

29. The Republic of Kazakhstan **does not accept** the recommendation 126.32.

30. Currently, taking into account the improved health, based on the opinion of medical experts, the mentioned person is exempted from compulsory medical treatment.

VII. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

31. The Republic of Kazakhstan **does not accept** the following recommendations: 126.28; 126.29; 126.33; 126.34; 126.35; 126.36; 126.37; 126.38; 126.39; 126.40; 126.41; 126.42; 126.43; 126.44; 126.45; 126.46; 126.47; 126.48.

126.28

32. A law passed in 2011, complies with norms of the Constitution. Violations of international standards do not observe. The state will continue its improvement taking into

account the practices and its compliance with the provisions of the Constitution of the Republic of Kazakhstan. Nowadays, State examines opinions and recommendations of the religious actors and civil society on the issue of legislation improvement in this area.

126.29

33. The right to freedom of employees to form or join a trade union and independence of the trade unions are provided in the adopted law and having this in mind, the recommendation on modification or cancellation of this provision has not been accepted.

126.33, 126.34, 126.45

34. Kazakhstan is considering the possibility of further improvement of the legislation on religious activities. However, the revision of the Law as restricting the freedom of religion and belief, including the abolition of registration of religious groups is not supported.

126.35

35. Criminal proceeding initiated by a private person, whose honor and dignity were violated is in line with international practice. In this regard, the grounds for the revision of these articles is not envisaged.

126.36, 126.38, 126.39, 126.41

36. Taking into account international practices and standards, the state has come to the conclusion that the right to freedom of expression is not absolute, and it is necessary to maintain the criminal penalty for public insults, spreading false information discrediting the honor and dignity, including the respective state officials.

37. Criminal proceedings for libel and insult can be initiated by the request of persons, institute administrative prejudice acts.

38. Using the media as a means for slander is considered to be an aggravating circumstance. A responsibility of journalist to respect the rights of others remains as a professional obligation.

126.37

39. Managing the communication networks by an authorized body in cases of the threat or in emergency is in line with international practice and aims to protect national security and public order. In this context, amendments to the Law "On Communications" are not supported.

126.40

40. In 2011 – amended Civil Code concerning the exclusion of compensation for non-pecuniary damage to entities. In respect to decriminalization see above, responses provided in paragraphs 126.36, 126.38, 126.39, 126.41.

126.35 (in part of Article 400 and 403 of the Criminal Code), 126.42, 126.43, 126.44, 126.47, 126.48

41. Kazakhstan does not support the position of the current excessive restrictions. As in the international practice, the notification procedure of public events is used.

42. The authorities consider adoption of the recommendations premature before the completion of the analysis of national and international practices, as well as the results of the special procedures of the UN.

43. However today the authorities discuss the concept of the draft legislative amendments aimed at preventing violations of public order, fire safety, health, normal functioning of transport, infrastructure, preservation of green space, during mass sports, cultural, entertainment and other events.

126.46

44. Compliance with requirements of the law, respect the rights of others, compliance with moral norms and legal culture is mandatory. The Constitution guarantees the protection of the rights and freedoms of every person, and at the same time establishes the equality of all before the law and the courts. In this context, persons who consider that their rights have been violated are entitled to the right to appeal to the authorized body and the court. Moreover, Kazakhstan has recognized the competence of the UN committees to consider and examine individual complaints when domestic remedies were exhausted.

VIII. Social rights of migrants and members of their families, their equal access to work, education, health

45. The Republic of Kazakhstan **does not accept** the following recommendations: 126.49, 126.50.

126.49, 126.50

46. The national legislation provides a sufficient level of social protection, including access to work to migrants that arrive to the country legally and members of their families. The migration policy is conducted in accordance with the constitutional guarantee of non-discrimination and the protection of human rights and freedoms with available resources, international obligations, including under international agreements with appropriate countries. Among the latest steps is the initiation of a simplified procedure of granting permits to migrant workers in December 2013.